

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
GLENN R. CARPENTER d.b.a. )  
PACIFIC STATES CLEARING COMPANY, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 917

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of two \$100 civil penalties for alleged open burning violations of respondent's Regulation I having come on regularly for formal hearing before Board members Chris Smith and Walt Woodward on the 1st day of March, 1976 in Seattle, Washington, and appellant Glenn R. Carpenter d.b.a. Pacific States Clearing Company, appearing pro se, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin, and the Board having considered the sworn testimony, exhibits, records and files herein and having entered on the 4th day of March, 1976, its

1 proposed Findings of Fact, Conclusions of Law and Order, and the Board  
2 having served said proposed Findings, Conclusions and Order upon all  
3 parties herein by certified mail, return receipt requested and twenty  
4 days having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,  
6 Conclusions and Order and the Board being fully advised in the premises;  
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
9 Findings of Fact, Conclusions of Law and Order dated the 4th day of  
10 March, 1976, and incorporated by this reference herein and attached  
11 hereto as Exhibit A, are adopted and hereby entered as the Board's  
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this sixth day of April, 1976.

14 POLLUTION CONTROL HEARINGS BOARD

15 Chris Smith  
16 CHRIS SMITH, Chairman

17 Walt Woodward  
18 WALT WOODWARD, Member

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GLENN R. CARPENTER d.b.a.  
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FINDINGS OF FACT,  
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AND ORDER

This matter, the appeal of two \$100 civil penalties for alleged open burning violations of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, Chairman, and Walt Woodward, presiding officer) as a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on March 1, 1976.

Appellant was represented by a co-owner, Glenn R. Carpenter; respondent appeared through its counsel, Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

EXHIBIT A

Witnesses were sworn and testified. Exhibits were admitted.

From testimony heard and exhibits examined, the Pollution Control Hearings Board makes these

#### FINDINGS OF FACT

##### I.

Respondent, pursuant to RCW 43.21B.260, has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

Section 9.02(b)(3) of Regulation I makes it unlawful to cause or allow an outdoor fire containing ". . . asphalt, petroleum products . . . rubber products . . . ."

Section 9.02(b)(4) of Regulation I makes it unlawful to cause or allow an outdoor fire for the purpose of demolition.

Section 3.29 of Regulation I authorizes a civil penalty of not more than \$250 for any violation of Regulation I.

##### II.

On July 8, 1975, near North Bend, King County, two outdoor fires, caused by appellant, contained demolition scrap lumber, pieces of asphaltic composition roofing, tarpaper and, in one of the piles, a rubber tire. The piles, each 40 feet in diameter and six feet high, were 100 feet apart. The fires were ignited in connection with appellant's work in right-of-way clearing for the State Highway Department's I-90 by-pass of North Bend. Material in the fires included scrap lumber from two demolished one-story frame houses.

##### III.

The fires and their contents were observed by an inspector on

FINDINGS OF FACT,  
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1 respondent's staff. As a result, he served on appellant Notice of  
2 Violation Nos. 11020 and 11021, one for each pile. Each notice cited  
3 Section 9.02 of Regulation I. Subsequently and in connection therewith,  
4 respondent served on appellant Notice of Civil Penalty Nos. 2246  
5 (regarding Notice of Violation No. 11020) and 2245 (regarding Notice  
6 of Violation No. 11021), each in the amount of \$100, both of which  
7 are the subject of this appeal.

8 IV.

9 Appellant, at the time, held a valid open burning permit from  
10 the State Department of Natural Resources. This permit, however,  
11 covered only the burning of natural vegetation.

12 V.

13 Appellant made a good-faith effort to remove from the demolished  
14 scrap lumber all composition shingles and tarpaper. Appellant does  
15 not know how the rubber tire found its way into the fire.

16 VI.

17 Appellant, an Oregon-based concern, was not aware that demolition  
18 burning is prohibited by Regulation I.

19 VII.

20 A "state inspector," believed by appellant to be associated  
21 with the State Highway Department, approved the demolition of the  
22 two houses and the placing of the scrap lumber on the fires.

23 VIII.

24 The instant notices of violation are the first such received by  
25 appellant in this state.

26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

IX.

Any Conclusion of Law hereinafter stated which may be deemed to be a Finding of Fact is adopted herewith as same.

From these facts, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant was in violation of Regulation I as cited in Notice of Violation Nos. 11020 and 11021.

II.

In the light of the observed violations, Notice of Civil Penalty Nos. 2245 and 2246, being in amounts which are two-fifths of the maximum allowable penalties, are reasonable.

III.

It may be that the amounts of the civil penalties reflect the fact that these are the first violations cited against appellant by respondent. However, two factors developed at the hearing indicate a need for further leniency.

IV.

Appellant made a good-faith effort to prevent tarpaper and composition shingles from being placed in the fire.

V.

Secondly, and of greater importance in the view of this Board, is that an employee of the State Highway Department apparently buttressed appellant's mistaken view that open burning of demolition material is permissible. The evidence that a State Highway Department

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1 official did, in effect, approve placing the demolition material on  
2 the natural vegetation fires is not conclusive and the Department was  
3 not a party to this matter. But the testimony strongly suggests that  
4 this did occur. This, if a fact, is most regrettable. Surely, the  
5 various agencies of government owe it to the public to respect all  
6 rules and regulations of government. For this reason, this Board  
7 is causing a copy of this order to be sent to the State Highway  
8 Department.

9 As to the appellant, the Board concludes that because of the  
10 above incident, further leniency is indicated.

11 VI.

12 Any Finding of Fact which should be deemed a Conclusion of  
13 Law is hereby adopted as such.

14 Therefore, the Pollution Control Hearings Board issues this

15 ORDER

16 The appeal is denied, Notice of Civil Penalty Nos. 2245 and  
17 2246 are sustained, but appellant is directed to pay respondent  
18 \$100, the balance of \$100 to be suspended pending no similar violations  
19 for a period of six months from the date this order becomes final.

20 DONE at Lacey, Washington, this 4<sup>th</sup> day of March, 1976.

21 POLLUTION CONTROL HEARINGS BOARD

22 Chris Smith  
23 CHRIS SMITH, Chairman

24 Walt Woodward  
25 WALT WOODWARD, Member  
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27 FINDINGS OF FACT,  
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